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# Optimizing Non-Conviction-Based Asset Forfeiture in Indonesia: Strengthening the Legal Framework for Criminal Asset Recovery

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**Abstract:** Criminal asset forfeiture is an important instrument for eliminating the economic benefits of crime and strengthening asset recovery. However, Indonesia's existing forfeiture mechanisms remain largely dependent on criminal proceedings and are fragmented across sectoral legislation, creating limitations when an offender cannot be prosecuted or a criminal conviction cannot be obtained. This study aims to examine the limitations of Indonesia's existing legal framework and formulate an optimized framework for Non-Conviction-Based Asset Forfeiture (NCB Asset Forfeiture) to strengthen criminal asset recovery. This normative legal study employs statutory, conceptual, case, and comparative approaches, with Switzerland and the Philippines serving as comparative jurisdictions. The findings demonstrate that Indonesia already has several mechanisms with NCB characteristics, particularly within the anti-money laundering regime, but lacks a comprehensive, autonomous, and uniform framework. Optimizing NCB Asset Forfeiture requires an independent *in rem* proceeding, clearly defined evidentiary standards, judicial oversight, protection of bona fide third parties, proportionality, and a transparent and accountable asset management system. Such a framework is necessary to enhance the effectiveness of criminal asset recovery while maintaining legality, due process of law, and protection of property rights.

**Keywords:** Asset Forfeiture, Non-Conviction-Based Asset Forfeiture, Asset Recovery, Criminal Offenses.

## INTRODUCTION

Economic crimes which initially took conventional forms such as theft, fraud, and embezzlement, have evolved into increasingly complex forms involving educated offenders, sophisticated methods, and, in many cases, transnational networks. These crimes not only generate substantial illicit assets but also require considerable financial resources to support the equipment, facilities, and infrastructure necessary for their commission (Datuan, 2017). Such developments have consequently increased the complexity of criminal law enforcement

and created significant challenges for law enforcement authorities in identifying offenders, tracing illicit assets, and recovering the proceeds and instruments of crime (Ginting, 2011).

The primary objective of economically motivated crimes is generally the acquisition and accumulation of wealth. From this perspective illicit assets constitute an essential component that sustains criminal activities. Therefore, an effective strategy for preventing and combating economic crime should not be limited to the prosecution and punishment of offenders but should also target the proceeds and instrumentalities of crime. Asset recovery is thus increasingly recognized as an important component of criminal justice policy. The recovery of criminal assets is particularly significant in corruption cases because the return of illicitly acquired assets can address the economic consequences of crime while simultaneously reducing the benefits derived from criminal activities (Datuan, 2017; Sudarto, 2017). This approach does not diminish the significance of imprisonment or other criminal sanctions imposed on offenders. Rather, it reflects the understanding that punishment directed solely at the offender may be insufficient to eliminate the economic incentives underlying profit-oriented criminal activities (Ginting, 2011).

The development of Indonesia's criminal justice system has traditionally emphasized the identification of criminal acts, the determination of offenders, and the imposition of criminal sanctions, particularly imprisonment. By contrast, developments in contemporary criminal law increasingly place emphasis on the tracing, seizure, confiscation, and recovery of proceeds and instrumentalities of crime. *Instruments of crime* refer to property or means used to commit a criminal offense or that facilitate the commission of such an offense. The shift from an offender-oriented approach toward an asset-oriented approach is particularly relevant in addressing financial crimes including corruption, money laundering, and other forms of organized economic crime (Greenberg et al., 2009). The development of asset recovery mechanisms reflects a broader understanding that combating financial crime requires attention not only to the offender but also to the economic resources generated or utilized by criminal activities (Simser, 2008).

The concept of asset forfeiture is not entirely new to the Indonesian legal system. Several regulations that were previously in force had already provided mechanisms for the seizure and forfeiture of assets associated with criminal conduct. These included the Central War Authority Regulation No. PRT/PEPERPU/013/1958 concerning the Investigation, Prosecution, and Examination of Corrupt Acts and Property Ownership; Government Regulation in Lieu of Law No. 24 of 1960 concerning the Investigation, Prosecution, and Examination of Corruption Offenses; and Law No. 3 of 1971 concerning the Eradication of Corruption. These legal instruments demonstrate that the confiscation of assets connected to criminal conduct has historically formed part of Indonesia's legal response to corruption and illicit enrichment. The historical development of these mechanisms indicates that asset forfeiture has long been recognized as an instrument accompanying the enforcement of criminal law in Indonesia (Ramelan et al., 2012).

Those regulations were subsequently repealed and replaced by Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001 (hereinafter referred to as the Anti-Corruption Law). The Anti-Corruption Law provides more extensive provisions concerning the seizure and forfeiture of proceeds and instrumentalities of corruption. It also incorporates a limited mechanism concerning the reversal of the burden of proof in relation to the acquisition of assets. Under Article 37 paragraph (4) where a defendant is unable to establish the legitimacy of wealth that is disproportionate to his or her income or the source of the increase in wealth, such failure may be used to strengthen existing evidence of corruption. This mechanism remains closely connected to the criminal proceedings against the defendant. Consequently where the defendant is acquitted or released from all criminal charges, the claim for forfeiture of the relevant assets may also be rejected pursuant to the

applicable provisions of the Anti-Corruption Law. This demonstrates a fundamental limitation of an asset forfeiture mechanism that remains dependent upon the outcome of criminal proceedings (Saputra, 2017; Sudarto, 2017).

The limitations of an offender-centered approach have encouraged a broader shift in criminal justice policy from pursuing offenders toward pursuing the assets generated by criminal activities. The rationale is particularly significant in financial crimes because criminal proceeds may remain accessible to offenders or third parties even after the offender has been prosecuted or convicted (Sudarto, 2017). Effective asset recovery requires legal mechanisms capable of tracing and recovering illicit assets independently of the successful prosecution or conviction of the person who committed the underlying offense. In this context, Non-Conviction-Based Asset Forfeiture (NCB Asset Forfeiture) has emerged as an alternative legal mechanism that allows the forfeiture of assets associated with criminal conduct without requiring a prior criminal conviction against the asset holder (Greenberg et al., 2009; Saputra, 2017). NCB Asset Forfeiture is consequently designed to address circumstances in which conventional conviction-based mechanisms are unable to effectively recover assets despite indications that such assets are connected to criminal activities.

At the international level, asset recovery has become an important component of efforts to combat corruption and transnational financial crime. International developments have increasingly encouraged states to establish mechanisms for identifying, tracing, freezing, seizing, and confiscating proceeds of crime. The United Nations Convention against Corruption (UNCAC) 2003, in particular, places asset recovery within the broader international framework for combating corruption and encourages States Parties to adopt measures for the recovery and confiscation of proceeds of crime. The development of such mechanisms reflects the broader international movement toward depriving offenders of the economic benefits derived from criminal activities (Atmasasmita, 2007; Greenberg et al., 2009). For states confronting complex financial crimes, the availability of effective asset recovery mechanisms is therefore essential not only for compensating victims or restoring state losses but also for reducing the economic incentives that sustain criminal activities.

Indonesia as a State Party to UNCAC, has developed several mechanisms for recovering assets derived from criminal activities. Nevertheless, Indonesia has not yet established a comprehensive and integrated legal framework specifically governing NCB Asset Forfeiture across different categories of criminal offenses. In practice, mechanisms resembling non-conviction-based forfeiture can be identified in certain areas of Indonesian law, including provisions relating to money laundering. The Anti-Money Laundering Law provides mechanisms that enable authorities to address assets associated with money laundering under particular circumstances, thereby demonstrating that Indonesian law already contains elements of an asset-oriented approach (Datuan, 2017). However, the existing framework remains fragmented and does not provide a comprehensive legal basis for the systematic forfeiture of assets independently of a criminal conviction across different categories of offenses. This limitation becomes particularly significant in corruption cases, where the recovery of state financial losses may encounter legal and procedural obstacles when forfeiture remains dependent upon the outcome of criminal proceedings (Saputra, 2017; Sudarto, 2017).

The urgency of establishing a comprehensive legal framework has also been reflected in the development of the Draft Law on the Forfeiture of Criminal Assets (Rancangan Undang-Undang Perampasan Aset Tindak Pidana). The Indonesian Government began developing the Academic Draft of the proposed legislation through the National Law Development Agency (Badan Pembinaan Hukum Nasional/BPHN) in 2012 (Ramelan et al., 2012). The proposed legislation was subsequently included in the National Legislation Program (*Program Legislasi Nasional/Prolegnas*) for 2015–2019. The prolonged legislative development demonstrates that the establishment of a comprehensive statutory framework for criminal asset forfeiture has

faced significant institutional and regulatory challenges (DPR RI, n.d.; Kementerian Hukum dan HAM RI, n.d.). This situation creates a regulatory gap between the growing need for effective asset recovery and the availability of legal mechanisms capable of addressing assets that cannot be effectively recovered through conventional criminal proceedings. The need to establish a clear legal basis for NCB Asset Forfeiture has consequently become an important issue in the development of Indonesia's asset recovery framework (Saputra, 2017).

The application of NCB Asset Forfeiture nevertheless raises important legal questions. On the one hand, such a mechanism may strengthen the effectiveness of asset recovery by enabling the state to pursue property suspected of being connected to criminal activities without requiring a prior criminal conviction. On the other hand, its application must be carefully designed to ensure consistency with fundamental legal principles, including due process of law, the protection of property rights, judicial oversight, proportionality, and the presumption of innocence. Comparative scholarship on civil and non-conviction-based forfeiture demonstrates that expanding state authority to confiscate property must be accompanied by adequate procedural safeguards to prevent arbitrary deprivation of legitimate property rights (Clarke, 2010; Romantz, 1994; Simser, 2008). The central issue is therefore not merely whether NCB Asset Forfeiture should be introduced into the Indonesian legal system, but how such a mechanism can be optimally designed and implemented while maintaining an appropriate balance between the state's interest in recovering illicit assets and the protection of individual rights.

Against this background, this study examines the optimization of NCB Asset Forfeiture within the Indonesian legal system as a mechanism for criminal asset recovery. The study focuses on the existing legal framework governing asset forfeiture, the limitations of conviction-based forfeiture mechanisms and the legal prospects and requirements for strengthening NCB Asset Forfeiture in Indonesia. The study argues that the development of a clear, comprehensive, and rights-compatible legal framework is necessary to ensure that asset recovery can operate effectively without being entirely dependent on the conviction of the offender. Accordingly strengthening the legal framework for NCB Asset Forfeiture may provide an important avenue for improving Indonesia's capacity to recover criminal assets while maintaining the principles of legality, due process, judicial oversight and protection of legitimate property rights.

## METHOD

This study employs normative legal research (*doctrinal legal research*) aimed at examining legal norms, principles, and doctrines relevant to Non-Conviction-Based (NCB) Asset Forfeiture and criminal asset recovery in Indonesia. Normative legal research is conducted by examining primary and secondary legal materials to identify applicable legal rules and formulate legal arguments in addressing the research problem. The primary legal materials examined in this study include relevant laws and regulations governing asset seizure and forfeiture, corruption, money laundering, and criminal asset recovery. Secondary legal materials consist of legal literature, academic writings, scholarly articles, and other relevant legal references that support the analysis.

The study applies several complementary legal approaches, namely the statutory approach, conceptual approach, case approach, and comparative approach. The statutory approach is used to examine the legal provisions governing asset forfeiture and their relationship with the existing Indonesian criminal justice framework. The conceptual approach is employed to analyze the legal concepts and principles underlying NCB Asset Forfeiture, particularly its relationship with criminal asset recovery, due process, and the protection of property rights. The case approach examines relevant judicial decisions, including the Decision of the South Jakarta District Court No. 1982/Pid.B/2004/PN.Jak.Sel. dated 30 March 2005, to

identify judicial considerations relevant to asset forfeiture without conviction. Meanwhile, the comparative approach adopts a functional method by comparing the legal frameworks and mechanisms of asset forfeiture in Indonesia with those of Switzerland and the Philippines.

The legal materials are analyzed qualitatively through systematic interpretation and legal reasoning. The analysis focuses on identifying the strengths and limitations of the existing Indonesian legal framework, examining the legal basis and practical relevance of NCB Asset Forfeiture, and comparing foreign legal mechanisms that may provide lessons for Indonesia. The findings are subsequently used to formulate a prescriptive legal argument concerning the optimization and strengthening of the legal framework for NCB Asset Forfeiture as an instrument of criminal asset recovery in Indonesia.

## RESULTS AND DISCUSSION

### The Existing Legal Framework for Asset Forfeiture in Indonesia and Its Limitations

The Indonesian legal system has long recognized the seizure and forfeiture of property associated with criminal conduct. Historically, asset forfeiture has been incorporated into various legal instruments, particularly those addressing corruption and other serious offenses. The existence of these provisions demonstrates that Indonesian criminal law does not exclusively focus on the punishment of offenders but also recognizes the importance of depriving perpetrators of the economic benefits and instrumentalities associated with criminal activities. However, the existence of asset forfeiture provisions should not be equated with the existence of a comprehensive Non-Conviction-Based (NCB) Asset Forfeiture regime. The central problem lies in the legal character, procedural dependence, and fragmented scope of the existing forfeiture mechanisms.

Under the Indonesian Anti-Corruption Law, forfeiture is primarily constructed as a consequence of criminal proceedings. Law No. 31 of 1999, as amended by Law No. 20 of 2001, provides several instruments for recovering assets associated with corruption, including the confiscation of property, payment of replacement money, and mechanisms for recovering state losses through civil proceedings in circumstances specified by law. These mechanisms reflect an asset-recovery orientation, but their operation remains substantially connected to the determination of criminal conduct and the position of the defendant. The asset is generally treated as an object connected to the criminal offense, while the criminal proceeding remains centered on establishing the individual responsibility of the accused.

This structure creates an important distinction between conviction-based forfeiture and NCB Asset Forfeiture. In a conviction-based system, the legal basis for permanently depriving a person of property is generally connected to the establishment of a criminal offense and the adjudication of the offender's criminal responsibility. The forfeiture of property therefore functions as an ancillary consequence of criminal adjudication. In contrast, NCB Asset Forfeiture is principally directed at the property itself. The central legal question is whether the property constitutes proceeds, instrumentalities, or other property sufficiently connected to criminal conduct, rather than whether a particular individual should be found criminally liable. The distinction is not merely terminological; it determines the procedural architecture, evidentiary requirements, parties to the proceedings, and legal consequences of the forfeiture.

The Indonesian Anti-Corruption Law illustrates this limitation through its treatment of unexplained or disproportionate wealth. Article 37 provides a mechanism concerning the burden of proof in relation to assets allegedly inconsistent with the defendant's legitimate income or lawful sources of wealth. However, this mechanism operates within the criminal proceeding. It does not create a separate proceeding in which the legality of the property can be determined independently from the criminal responsibility of its holder. The defendant remains the subject of the criminal case, and the property remains connected to the determination of the underlying offense. Therefore, although the reversal of the burden of proof

may strengthen the prosecution's capacity to establish the relationship between the defendant and suspicious assets, it cannot by itself be regarded as NCB Asset Forfeiture.

This distinction has significant practical consequences. A criminal proceeding may fail to result in a conviction for reasons that do not necessarily establish the lawful origin of the property. For example, the alleged offender may die before the criminal case is completed, may abscond, may be unknown, or may be beyond the jurisdiction of the Indonesian authorities. There may also be evidentiary difficulties in establishing individual criminal liability even though financial intelligence, transaction records, ownership structures, or other evidence indicate that particular assets are connected to unlawful activities. Under a system that makes permanent forfeiture substantially dependent upon criminal adjudication, such circumstances may create an opportunity for illicit assets to remain outside the reach of the state. The legal problem is therefore not simply the failure to punish the offender but the possibility that the absence of a conviction becomes indirectly equivalent to the absence of an effective mechanism for recovering the assets.

The problem becomes even more significant where illicit assets have been deliberately separated from the direct ownership of the offender. Modern financial crimes frequently involve nominee arrangements, corporate entities, layered transactions, transfers to relatives or associates, and movement of assets across jurisdictions. In such circumstances, establishing the criminal responsibility of a particular individual and establishing the illicit character of particular property may present two different evidentiary questions. A legal system that treats these questions as inseparable risks allowing the successful concealment or transfer of assets to undermine the recovery process. An effective asset-recovery framework therefore requires the capacity to follow the property even where the connection between the property and the original offender has been obscured.

The Anti-Money Laundering Law provides a more developed basis for addressing this problem. Law No. 8 of 2010 contains provisions that allow assets associated with money laundering to be addressed even in circumstances where the predicate offense has not previously been established through a separate conviction. The law also provides mechanisms concerning property when the person suspected of committing the offense cannot be found, thereby demonstrating that Indonesian legislation already recognizes situations in which the legal status of property cannot simply depend upon the successful prosecution of an identifiable offender. These provisions are significant because they demonstrate that the Indonesian legal system has already moved, to a certain extent, toward an asset-oriented approach.

Mechanisms contained in the Anti-Money Laundering Law cannot simply be treated as a complete NCB Asset Forfeiture regime. Their application is primarily situated within the statutory framework for money laundering and remains subject to specific procedural conditions. Consequently, the mechanism is sector-specific rather than generally applicable to assets derived from different categories of criminal conduct. This fragmented legislative structure creates differences in the treatment of assets depending on the predicate offense involved. An asset associated with money laundering may be subject to mechanisms that are unavailable or more difficult to apply where the same type of property is connected to another serious offense. From the perspective of legal certainty and equal protection, this fragmentation presents a significant limitation.

Another important issue concerns the relationship between criminal proceedings and asset proceedings. The existing Indonesian framework tends to treat asset recovery as an element accompanying the prosecution of an offense rather than as an independent legal proceeding concerning property. This structure is understandable from the perspective of conventional criminal law, because the state traditionally obtains authority to deprive a person of property after establishing that the property is connected to a criminal offense. However, this approach becomes less effective when criminal proceedings cannot proceed to a final

conviction for reasons unrelated to the lawful status of the property. NCB Asset Forfeiture addresses precisely this legal gap by providing a separate procedural pathway through which the state can seek judicial determination concerning property without making the criminal conviction of its holder an absolute prerequisite.

The distinction between *in personam* and *in rem* proceedings is therefore central to the Indonesian debate. The conventional criminal process is principally *in personam*: the state prosecutes a person for an alleged offense and seeks a judgment concerning that person's criminal responsibility. NCB Asset Forfeiture, by contrast, is designed as an *in rem* mechanism in which the property constitutes the principal subject of the proceeding. The state must establish the statutory basis connecting the property to criminal conduct, while the interested person is given an opportunity to demonstrate lawful ownership or another legitimate basis for retaining the property. The adoption of such a mechanism would not eliminate criminal prosecution. Rather, it would establish a parallel legal instrument addressing a different object of state intervention.

This distinction also affects the burden and standard of proof. Treating NCB Asset Forfeiture merely as an extension of criminal confiscation risks importing the entire structure of criminal liability into a proceeding whose object is the property. Conversely, allowing forfeiture on the basis of an unsubstantiated suspicion would create serious risks to property rights and due process. The Indonesian legal framework therefore requires a clear distinction between the evidentiary threshold for initiating asset-preservation measures and the standard necessary for final forfeiture. Temporary freezing or seizure may be justified where there is sufficient preliminary evidence of a connection between the property and criminal conduct, particularly where there is a risk of dissipation. Final forfeiture, however, should require judicial examination and sufficient evidence establishing the statutory grounds for forfeiture.

The protection of third-party rights constitutes another unresolved dimension. Illicit assets are not necessarily held directly in the name of the person who committed the underlying offense. Property may be transferred to spouses, family members, business partners, corporations, nominees, or other third parties. Some transfers may be deliberately designed to conceal criminal proceeds, while others may involve persons who genuinely acquired the property without knowledge of its illicit origin. An effective NCB Asset Forfeiture framework must therefore distinguish between sham or fraudulent transfers and bona fide interests. Without such a distinction, asset recovery may produce disproportionate interference with legitimate property rights. Conversely, if third-party ownership is allowed to prevent forfeiture too easily, criminal proceeds can be shielded through nominal ownership arrangements. The challenge is therefore to establish a judicial mechanism capable of examining the legitimacy, good faith, consideration, and circumstances surrounding third-party acquisition.

The same problem arises in relation to the proportionality of forfeiture. Not every property connected in some manner to criminal activity necessarily warrants unrestricted forfeiture. The legal framework must identify which categories of property may be forfeited, including direct proceeds, indirect proceeds, instrumentalities, substitute assets, and assets of equivalent value. It must also regulate circumstances in which property has been commingled with legitimate assets. Without precise statutory definitions, broad forfeiture powers may produce uncertainty concerning the scope of state authority. Conversely, excessively narrow definitions may allow offenders to evade forfeiture simply by transforming or transferring the proceeds of crime.

The institutional structure of asset recovery also presents a challenge. Asset tracing and recovery involve multiple institutions, including investigators, prosecutors, financial intelligence authorities, courts, and agencies responsible for the management of seized and forfeited property. Fragmentation of institutional authority may lead to overlapping functions, inconsistent practices, and delays in asset preservation and disposition. NCB Asset Forfeiture

therefore requires not only substantive legal provisions but also a clearly defined institutional architecture. The authority to identify and trace assets, request freezing or seizure, initiate forfeiture proceedings, adjudicate claims, and manage forfeited property should be allocated through clear statutory rules.

Asset management is particularly important because forfeiture is meaningful only if the recovered property can ultimately be preserved and utilized effectively. Assets may decline in value, incur maintenance costs, or become difficult to manage if proceedings are prolonged. Accordingly, the legal framework should regulate the preservation, valuation, management, sale, and final disposition of forfeited assets. A failure to establish such mechanisms may transform a successful judicial forfeiture into an administratively ineffective recovery process. Asset recovery should therefore be understood as a continuous process extending from identification and tracing to final utilization of recovered property.

The judicial dimension can also be observed in the South Jakarta District Court Decision No. 1982/Pid.B/2004/PN.Jak.Sel., dated 30 March 2005. The decision is relevant to the discussion because it demonstrates the way asset-related consequences have traditionally been situated within criminal adjudication. The case illustrates the broader structural issue that the legal status of assets is generally examined in connection with the determination of the underlying criminal offense and the responsibility of the accused. This approach is consistent with the conventional *in personam* structure but provides limited guidance for circumstances in which the state must pursue assets while the criminal responsibility of a particular individual cannot be conclusively determined.

The analysis of the existing framework therefore reveals four interconnected limitations. First, the Indonesian system remains substantially conviction-dependent, particularly in corruption-related asset recovery. Second, existing NCB-like mechanisms are fragmented across sector-specific legislation, most notably in the area of money laundering. Third, Indonesian law has not yet provided a sufficiently clear and uniform distinction between criminal proceedings against persons and independent proceedings against property. Fourth, procedural safeguards concerning evidentiary standards, third-party rights, proportionality, judicial oversight, and asset management require an integrated statutory foundation.

These limitations should not, however, be interpreted as indicating that Indonesia must abandon its existing criminal asset-recovery mechanisms. Criminal forfeiture remains essential because criminal prosecution serves the independent purpose of establishing individual responsibility and imposing punishment. The appropriate policy direction is therefore complementarity rather than replacement. NCB Asset Forfeiture should function as an additional legal instrument for circumstances in which the state has a legitimate basis to pursue property connected to criminal activity but cannot effectively obtain a criminal conviction against the person associated with that property.

The principal legal finding is that the Indonesian problem is not the absence of asset forfeiture as such, but the absence of a coherent, autonomous, and uniformly applicable legal architecture for NCB Asset Forfeiture. Existing provisions demonstrate that the Indonesian legal system already contains several building blocks for such a mechanism. The Anti-Corruption Law provides an asset-recovery framework within criminal proceedings; the Anti-Money Laundering Law demonstrates the possibility of separating certain asset-related consequences from the prior establishment of a predicate offense; and judicial practice provides experience in dealing with property associated with criminal conduct. What remains necessary is to integrate these fragmented elements into a comprehensive framework that clearly regulates the relationship between criminal liability and asset liability, establishes an independent judicial procedure for forfeiture, and simultaneously guarantees legality, due process, proportionality, and protection of legitimate property rights.

**Non-Conviction-Based Asset Forfeiture: Comparative Legal Framework in Switzerland and the Philippines**

A comparison with Switzerland and the Philippines demonstrates that NCB Asset Forfeiture should not be understood as a mechanism that eliminates judicial control or permits the state to confiscate property arbitrarily. Rather, effective asset forfeiture systems combine the ability to pursue illicit assets with procedural safeguards for legitimate property owners and third parties.

Switzerland provides an important reference because its Criminal Code contains detailed provisions concerning the forfeiture of criminal assets. Article 70 establishes that courts shall order the forfeiture of assets acquired through an offense or intended to be used in committing an offense, while protecting third parties who acquired the assets in good faith and paid equivalent consideration or would otherwise suffer disproportionate hardship. The Swiss framework also provides for an equivalent-value claim where the original assets are no longer available. In relation to criminal or terrorist organizations, Article 72 establishes a particularly strong asset-oriented mechanism by permitting the forfeiture of assets subject to the organization's power of disposal and creating a rebuttable presumption concerning assets controlled by such organizations.

The significance of the Swiss model lies not simply in the existence of forfeiture powers but in the combination of asset-oriented confiscation and procedural safeguards. The framework recognizes that the objective of forfeiture is to deprive criminal activities of their economic benefits while simultaneously protecting persons who have acquired property legitimately. Thus, the protection of third-party rights is incorporated into the forfeiture framework itself rather than being treated as an external consideration.

The Philippines offers an even more direct example of NCB Asset Forfeiture. Under the Anti-Money Laundering Act, as amended, the Anti-Money Laundering Council (AMLC) is empowered to institute civil forfeiture proceedings through the Office of the Solicitor General. Where probable cause exists that monetary instruments or property are related to unlawful activity or money laundering, the AMLC may file a verified *ex parte* petition for forfeiture before the competent court. The Philippine framework therefore explicitly recognizes civil forfeiture as a distinct mechanism alongside criminal forfeiture.

The Philippine model is particularly relevant to Indonesia because the civil forfeiture mechanism is structured as a judicial proceeding rather than as an administrative confiscation conducted exclusively by law enforcement authorities. The court remains responsible for determining whether the property is subject to forfeiture. At the same time, persons claiming a legitimate interest in the property are given a procedural avenue to challenge the forfeiture. The United Nations review of the Philippines also notes that its Anti-Money Laundering Act and the Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing provide protection for bona fide third parties. The comparative findings can be summarized as follows.

**Table 1. Comparative Legal Framework**

| Legal Aspect | Indonesia | Switzerland | Philippines |
|---|---|---|---|
| General orientation | Predominantly conviction-dependent and sectoral | Asset-oriented forfeiture integrated into criminal law | Explicit civil forfeiture alongside criminal forfeiture |
| NCB mechanism | Available in limited statutory contexts, particularly money laundering | Certain forfeiture mechanisms can operate independently of individual criminal liability | Explicitly recognized through civil forfeiture proceedings |

| Legal Aspect | Indonesia | Switzerland | Philippines |
|---|---|---|---|
| Role of court | Central to criminal forfeiture and certain asset proceedings | Court determines forfeiture and safeguards third-party rights | Court determines civil forfeiture upon petition |
| Relationship with offender | Generally closely connected to criminal proceedings | Greater emphasis on the illicit character/control of assets in specified circumstances | Proceedings focus on property connected to unlawful activity |
| Third-party protection | Available through existing procedural and substantive mechanisms but fragmented | Explicit protection for good-faith third parties | Explicit procedural protection for legitimate claimants |
| Equivalent-value mechanism | Available in particular statutory contexts | Expressly recognized where assets are unavailable | Recognized in the AMLA framework under specified circumstances |
| Institutional mechanism | Multiple law enforcement institutions with sectoral authority | Judicial and law enforcement institutions operating within an integrated statutory framework | AMLC initiates civil forfeiture through the Office of the Solicitor General |
| Main lesson for Indonesia | Need for an integrated and autonomous framework | Combine forfeiture powers with safeguards and proportionality | Establish judicial civil forfeiture with clear standing and procedural safeguards |

The comparison demonstrates that the most relevant lesson for Indonesia is not to transplant the legal model of either country in its entirety. Rather, Indonesia can adopt the underlying functional principles of these systems: asset-oriented proceedings, judicial authorization, clear evidentiary standards, protection of bona fide third parties, and mechanisms for equivalent-value recovery. Such principles are compatible with the objective of developing a domestic NCB Asset Forfeiture mechanism while allowing its procedural structure to remain consistent with Indonesia's legal system.

## Optimizing the Legal Framework for NCB Asset Forfeiture in Indonesia

The findings indicate that the optimization of NCB Asset Forfeiture in Indonesia requires more than the introduction of a new concept into existing criminal legislation. It requires the establishment of a comprehensive legal framework that clearly defines the object of forfeiture, the initiating authority the competent court, the evidentiary standard, the rights of interested parties, the available remedies, and the mechanism for managing and returning forfeited assets.

NCB Asset Forfeiture should be constructed as an independent judicial proceeding against assets (*in rem*). The central question in such proceedings should be whether the property is sufficiently connected to criminal conduct, constitutes proceeds or instrumentalities of crime, or otherwise falls within the statutory categories of forfeitable property. The proceeding should not require the court to determine the criminal guilt of the asset holder as a prerequisite for forfeiture. This construction would enable the state to pursue assets in circumstances where the perpetrator is dead, has absconded, cannot be identified, or cannot be prosecuted for reasons that prevent a criminal conviction, while still requiring a judicial determination concerning the property itself.

The future legal framework should establish clear evidentiary standards. The effectiveness of NCB Asset Forfeiture cannot be achieved by simply lowering procedural safeguards. A workable system should distinguish between the evidentiary threshold required to initiate provisional measures, such as freezing or seizure, and the standard required for final forfeiture. The initial stage may require a lower threshold sufficient to establish a reasonable

basis for suspecting that assets are connected to criminal conduct, whereas permanent forfeiture should require a stronger judicial finding based on evidence presented in an adversarial proceeding. This differentiation would prevent premature deprivation of property while allowing law enforcement authorities to prevent the dissipation or concealment of illicit assets.

The legal framework should regulate the burden of proof and rebuttable presumptions carefully. A presumption concerning unexplained or disproportionate wealth may assist asset recovery, but it should not automatically transform possession of unexplained property into proof of criminal guilt. The legal consequences should instead remain confined to the property proceeding. The asset holder should be provided with a genuine opportunity to demonstrate lawful acquisition, legitimate ownership, or another legally recognized basis for retaining the property. The Swiss approach illustrates how rebuttable presumptions can be combined with judicial determination and protection of legitimate third-party interests.

Judicial oversight must constitute the central safeguard of NCB Asset Forfeiture. Law enforcement authorities may require powers to identify, trace, freeze and temporarily seize assets but final forfeiture should remain subject to a court decision. This arrangement is necessary to maintain the distinction between investigation and adjudication and to minimize the risk of arbitrary or disproportionate deprivation of property. Current discussions concerning Indonesia's Draft Law on Criminal Asset Forfeiture have likewise highlighted the need to prevent abuse of authority and to ensure protection of constitutional rights. The issue has become particularly relevant because the draft legislation is currently being developed with substantial public and expert participation.

The framework must provide effective protection for bona fide third parties. Criminal assets are frequently transferred, commingled, pledged, inherited, or placed under the control of persons who may not have participated in the underlying criminal conduct. A forfeiture regime that ignores such interests may undermine legal certainty and property rights. Therefore any person who claims a legitimate legal interest in the property should have standing to appear before the court, present evidence and seek exclusion or proportional relief. The comparative experience of Switzerland and the Philippines demonstrates that third-party protection is not contrary to effective forfeiture; rather, it strengthens the legitimacy and sustainability of the mechanism.

NCB Asset Forfeiture should be supported by a clear asset-management and disposition mechanism. Asset recovery does not end with a judicial forfeiture order. The state must determine how seized and forfeited assets are preserved, valued, managed, sold, returned or otherwise disposed of. Without an accountable asset-management system, the economic value recovered through forfeiture may be substantially reduced. Current legislative discussions in Indonesia have specifically identified asset management as an issue requiring institutional and technical attention, including the possible involvement of specialized expertise in asset management, accounting, and forensic investigation.

The future framework should establish a clear relationship between criminal proceedings and asset proceedings. Independence does not necessarily mean complete separation. Information and evidence obtained during criminal investigations may remain relevant to the asset proceeding while an asset proceeding should not automatically determine the criminal liability of the person concerned. The two proceedings should therefore be capable of operating in parallel or sequentially while maintaining separate legal questions and procedural safeguards. Such a structure would allow asset recovery to continue even when criminal proceedings are terminated for reasons that do not establish the lawful origin of the assets. The optimization model proposed by this study can therefore be summarized as follows.

**Table 2. Proposed Legal Framework for NCB Asset Forfeiture in Indonesia**

| Component | Proposed Indonesian Framework |
|---|---|
| Nature of proceeding | Independent *in rem* proceeding directed at assets |

| Component | Proposed Indonesian Framework |
|---|---|
| Trigger | Reasonable indication that assets constitute proceeds, instrumentalities, or property connected to specified criminal conduct |
| Initiating authority | Authorized law enforcement/prosecutorial authority through a judicial application |
| Final decision | Judicial order after an adversarial examination |
| Evidentiary model | Differentiated threshold for provisional measures and final forfeiture |
| Burden of proof | Structured and rebuttable, without converting asset proceedings into criminal guilt determination |
| Third-party rights | Explicit protection for bona fide owners and legitimate interest holders |
| Judicial safeguards | Notice, hearing, reasoned decision, and access to legal remedies |
| Asset management | Centralized, transparent, accountable management and disposition |
| Relationship with criminal proceedings | Autonomous but capable of using relevant evidence from criminal investigations |
| International cooperation | Compatibility with mutual legal assistance and cross-border asset recovery |
| Guiding principles | Legality, proportionality, due process, judicial oversight, and legal certainty |

This framework is particularly relevant in light of the continuing development of Indonesia's Draft Law on Criminal Asset Forfeiture. The need for such a framework is supported by previous studies identifying structural limitations in Indonesia's asset recovery regime. Saputra (2017) highlights the challenges of implementing NCB Asset Forfeiture in Indonesia, particularly the absence of a comprehensive legal framework governing forfeiture without a prior criminal conviction. Similarly, Sudarto (2017) argues that NCB Asset Forfeiture has significant potential as an instrument for recovering state losses arising from corruption, particularly where conventional criminal proceedings encounter difficulties in establishing individual criminal liability. Datuan (2017) further demonstrates that the use of money laundering legislation can strengthen asset recovery in corruption cases by providing mechanisms through which illicit assets can be pursued beyond the conventional treatment of the predicate offense. These findings indicate that the need for NCB Asset Forfeiture arises from concrete limitations in the existing asset recovery framework rather than merely from a theoretical preference for an alternative forfeiture model.

The international literature reinforces this finding by demonstrating that asset recovery should not be exclusively dependent on the successful prosecution of an offender. Greenberg et al. (2009) identify NCB Asset Forfeiture as particularly relevant where criminal prosecution is unavailable or ineffective, including circumstances involving deceased, absconding, or unidentified offenders. Simser (2008) similarly explains that civil forfeiture provides an asset-oriented mechanism through which the proceeds and instrumentalities of crime can be pursued independently from conventional criminal proceedings. These perspectives are relevant to Indonesia because criminal assets may remain concealed, transferred, or separated from the direct possession of the offender, making an offender-centered approach insufficient for effective recovery. Accordingly, the inability to establish individual criminal liability should not automatically prevent the state from pursuing property where sufficient evidence establishes its connection with criminal conduct.

At the same time previous literature demonstrates that expanding asset forfeiture powers creates a corresponding need for strong procedural safeguards. Clarke (2010) and Romantz (1994) highlight concerns surrounding civil forfeiture, particularly the potential tension between the state's interest in depriving offenders of illicit assets and the protection of legitimate property rights. Simser (2008) likewise emphasizes the importance of judicial and procedural controls in ensuring the legitimacy of civil forfeiture mechanisms. These findings are particularly significant for Indonesia because the introduction of NCB Asset Forfeiture without clear evidentiary standards, judicial oversight, proportionality requirements, and protection for bona fide third parties could generate new risks of arbitrary deprivation. Therefore, the effectiveness of NCB Asset Forfeiture should not be assessed solely by the

amount of assets recovered, but also by whether recovery is achieved through procedures consistent with due process and legal certainty.

On this basis NCB Asset Forfeiture should be positioned as a complementary asset-recovery mechanism rather than a substitute for criminal prosecution. Criminal prosecution remains necessary to establish individual criminal responsibility and impose criminal sanctions, whereas NCB Asset Forfeiture addresses a different legal question concerning the status and origin of particular property. The findings of previous studies therefore support a shift from an exclusively *follow-the-offender* approach toward a balanced *follow-the-money* and *follow-the-asset* approach, while maintaining appropriate safeguards for legitimate property holders (Datuan, 2017; Greenberg et al., 2009). For Indonesia this requires a comprehensive statutory framework incorporating independent asset-oriented proceedings, clearly defined evidentiary standards, judicial determination, protection of bona fide third parties, proportionality, and effective legal remedies. Such a framework would respond to the limitations identified in previous research while strengthening criminal asset recovery without undermining the rule of law and protection of property rights.

## CONCLUSION AND RECOMMENDATIONS

### Conclusion

This study concludes that Indonesia has established several mechanisms for criminal asset forfeiture, particularly through the Anti-Corruption Law and Anti-Money Laundering Law; however, these mechanisms remain fragmented and predominantly connected to criminal proceedings. This condition limits the effectiveness of asset recovery when criminal prosecution or conviction cannot be achieved despite sufficient indications that particular assets are derived from or connected to criminal conduct. Comparative analysis of Switzerland and the Philippines demonstrates that NCB Asset Forfeiture can provide an alternative mechanism through asset-oriented *in rem* proceedings supported by judicial oversight, clear evidentiary standards, protection of bona fide third parties, and proportionality. Therefore optimizing NCB Asset Forfeiture in Indonesia requires a comprehensive and autonomous legal framework that enables the recovery of illicit assets independently from the determination of individual criminal liability while maintaining due process, legality, legal certainty, and protection of property rights.

### Limitations

This study has several limitations. First, as a normative legal study, the analysis primarily relies on legislation, legal doctrines, judicial decisions, and comparative legal materials and therefore does not empirically examine the implementation of NCB Asset Forfeiture by Indonesian law enforcement institutions. Second, the comparative analysis is limited to Switzerland and the Philippines which were selected based on the relevance of their asset forfeiture mechanisms, and therefore does not encompass other jurisdictions that may provide additional regulatory models. Third, the Indonesian legal framework concerning criminal asset forfeiture continues to develop, particularly in relation to the Draft Law on Criminal Asset Forfeiture meaning that certain legal and institutional arrangements may change following legislative developments. These limitations suggest that the findings should be understood primarily as a normative and prescriptive legal analysis rather than as an empirical assessment of the effectiveness of NCB Asset Forfeiture in practice.

### Recommendations

Indonesia should establish a comprehensive statutory framework specifically governing NCB Asset Forfeiture as a complementary mechanism to conventional criminal forfeiture. The framework should clearly regulate independent *in rem* proceedings, the authority responsible

for initiating forfeiture, differentiated evidentiary thresholds for provisional and final measures, judicial oversight, protection of bona fide third parties, proportionality, legal remedies and transparent management and disposition of forfeited assets. The development of such legislation should also ensure coordination between asset proceedings and criminal proceedings without making criminal conviction an absolute prerequisite for asset recovery. In addition, institutional capacity should be strengthened through integrated asset-tracing procedures, inter-agency cooperation, specialized expertise, and mechanisms for domestic and international asset recovery. These measures would enable Indonesia to strengthen the effectiveness of NCB Asset Forfeiture while ensuring that expanded state powers remain consistent with due process and the protection of legitimate property rights.

**Author Contributions**

The author was solely responsible for the overall development of this study, including conceptualization of the research problem, formulation of the research objectives, development of the normative legal research framework, collection and analysis of primary and secondary legal materials, statutory and conceptual analysis, comparative examination of asset forfeiture mechanisms in Switzerland and the Philippines, interpretation of the findings, formulation of the proposed Indonesian legal framework, and preparation of the manuscript. The author also reviewed and revised the manuscript to ensure consistency between the research objectives, legal analysis, findings, conclusions, and recommendations.

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